

E-Filed 2/1/2011

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

MANUEL DE JESUS, an individual

Plaintiff,

V.

WACHOVIA now doing business as WELLS
FARGO BANK, N.A.; CAL-WESTERN
RECONVEYANCE CORPORATION; and DOES
1 through 50, inclusive,

Defendants.

Case Number 5:10-cv-04212-JF (HRL)

ORDER¹ GRANTING MOTION TO
DISMISS WITH LEAVE TO AMEND;
VACATING HEARING DATE; AND
CONTINUING CASE
MANAGEMENT CONFERENCE

[Re: Docket No. 27]

Defendants Wachovia, *et al.* (“Wachovia”) move to dismiss all claims in Plaintiff’s first amended complaint (“FAC”) pursuant to Fed. R. Civ. P. 12(b)(6).² The Court concludes that this motion is appropriate for determination without oral argument and will vacate the hearing date of February 4, 2011. *See* Civ. L.R. 7-1(b).

¹ This disposition is not designated for publication in the official reports.

² Plaintiff originally filed the FAC on November 3, 2010, but it was stricken by the Court for failure to amend pursuant to Fed. R. Civ. P. 15(a). Plaintiff re-filed the FAC on November 22, 2010.

Under this Court's Civil Local Rules, Plaintiff's opposition was due at least twenty-one days before the noticed hearing date of February 4, 2011—here, not later than January 14, 2011. *See Civ. L.R. 7-3(a).* As of the date of this order, Plaintiff has not filed opposition papers. Because the instant motion appears well-taken and is unopposed, the motion will be granted, with leave to amend. Any amended pleading shall be filed within twenty (20) days after the date of this order. As the Court directed in its previous dismissal order, any amended pleading must address the arguments made by Wachovia in its moving papers. Because the instant motion is the second that Plaintiff has failed to oppose, further leave to amend will not be granted without a substantial showing of good cause.

ORDER

For good cause shown,

- (1) the motion to dismiss Plaintiff's First Amended Complaint is GRANTED, WITH LEAVE TO AMEND;
- (2) Defendants' request for judicial notice is DENIED as moot
- (3) the motion to strike portions of Plaintiff's First Amended Complaint also is DENIED as moot;
- (4) any amended pleading shall be filed within twenty (20) days after the date of this order;
- (5) the hearing date of February 4, 2011 is VACATED; and
- (6) the Case Management Conference set for February 4, 2011 is CONTINUED to April 22, 2011 at 10:30 a.m.

DATED: February 1, 2011

JEREMY FOGEL
United States District Judge